

IT IS ORDERED

Date Entered on Docket: July 16, 2021



The Honorable David T. Thuma
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:

FTS SCHOOL SERVICES, INC.,

NO. 21-10168-t7

DEBTOR.

**DEFAULT ORDER GRANTING WELLS FARGO EQUIPMENT FINANCE, INC.
RELIEF FROM STAY AND ABANDONMENT OF TWO 2016 IC CE S SCHOOL
BUSES AND TWO 2019 IC CE SCHOOL BUSES FROM THE ESTATE**

This matter came before the Court on the *Motion for Relief from the Automatic Stay Re: Two 2016 IC CE S School Buses and Two 2019 IC CE School Buses, and to Abandon Property from the Estate, or, as Partial Alternative, for an Order That the Automatic Stay Does Not Apply to the Two 2016 School Buses because they are not Property of the Estate*, filed on June 4, 2021 [Docket No. 31] (the “Motion”) by Wells Fargo Equipment Finance, Inc. (“WFEF”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On June 4, 2021, WFEF served the Motion and a Notice of the Motion and Deadline to Object thereto, also filed April 4, 2021 [Doc. 32] (the “Notice”) on counsel of record for the Debtor and the case trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Trustee and the Debtor, in care of its President, Rose Bleth, by United States First Class Mail, postage prepaid, in accordance with Bankruptcy Rules 7004 and 9014. WFEF also served copies of the Notice on all parties on the mailing matrix maintained by the Bankruptcy Court Clerk for this case, via First Class U.S. Mail, postage prepaid.

(b) The Motion relates to the following property:

- (i) 2016 IC CE S School Bus, VIN: 4DRBUAAN2GB746330;
- (ii) 2016 IC CE S School Bus, VIN: 4DRBUAAN4GB746330;
- (iii) 2019 IC CE School Bus, VIN: 4DRBUC8N9KB324632;
- (iv) 2019 IC CE School Bus, VIN: 4DRBUC8N2KB361294.

(Hereinafter, the “Property”).

Real property located at 3701 Ariel Ave., Gillette, Wyoming 82718 (the “Property”).

(c) The Notice specified an objection deadline of twenty-one (21) days from the date of service of the Notice, to which three (3) days were added for those served by mail pursuant to Fed.R.Bankr.P. 9006(f);

(d) The Notice was sufficient in form and content;

(e) WFEF filed a *Supplement to and Modification of Motion for Relief from Stay* on June 25, 2021 [Doc. No. 33] (the “Supplement”), bringing to the Court’s and other parties’ attention an additional document (Assumption and Assignment Agreement [“AAA”]) obtained

by WFEF's counsel after the filing of the Motion, and effectively withdrawing WFEF's request for the alternate relief of an order that the automatic stay did not apply to the two 2016 buses.

(f) WFEF's counsel sent a copy of the AAA, by email, to the Debtor's counsel of record and to the Trustee prior to the filing of the Supplement, on June 18, 2021.

(g) The objection deadline expired on June 28, 2021;

(h) As of July 14, 2021, neither the Debtor nor the Trustee, nor any other party in interest, has filed an objection to the Motion;

(i) The Motion is well taken and should be granted as provided herein; and

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), WFEF and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce their rights in the Property, including enforcement and/or foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, WFEF need not name the Trustee as a defendant in any state court action it may pursue to enforce and/or foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as a defendant in litigation to obtain an *in rem* judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

4. This Order does not waive WFEF's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Movant may file amended proofs of claim this bankruptcy case after a sale of the Property, should it claim that Debtor owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This Order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

END OF ORDER

Submitted by:

MOSES, DUNN, FARMER & TUTHILL, P.C.

/s/ Shay E. Meagle submitted electronically 07/15/2021

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